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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/469,530	12/22/1999	CHRISTIAN DAMPEIROU	GEI-075	5073

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EXAMINER

WELLS, LAUREN Q

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 10/23/2003

31

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/469,530

Applicant(s)

DAMPEIROU ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE f this c mmunication appears on the cover sheet with the correspondence address --

## P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 20-31,33,35 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-31,33,35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### **DETAILED ACTION**

Claims 20-31, 33 and 35-36 are pending. The Amendment filed 6/30/03, Paper No. 26, amended claims 20, 22, 28, and 35.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/28/03 has been entered.

#### ***Claim Objections***

Claim 27 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. A thickening agent is already recited in claim 20, from which claim 27 depends.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 22 and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant

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art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(i) The addition of the phrase "viscose film of polyurethane, an adhesive mass of acrylic polymer, a net of polypropylene on the outside of a silicone protective item and elastane covered with a self-adhesive emulsion of the active ingredients containing latex" in claim 22 is new and was not originally recited in the disclosure. The phrase elastane covered with a self-adhesive emulsion of the active ingredients containing latex has support in reference to cotton.

(ii) The phrase "wherein the adhesive fabric is made of a member selected from the group consisting of acrylic copolymer and a copolymer of polyethylene glycol and polypropyleneglycol" in claim 26 is new and was not originally recited in the disclosure.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) Claim 22 is vague and indefinite, as it is confusing.

1. The term "viscous" in 2 is a relative term which renders the claim indefinite.

The term "viscous" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

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2. What is an adhesive mass of acrylic polymer in line 3? What is a mass of a polymer? The specification does not define this term and one of ordinary skill in the art would not be apprised of its meaning.

3. What is a net of polypropylene in line 3?

4. What is a siliconated protective item in line 4?

5. What is elastane in line 4?

6. What does the phrase "covered with a self-adhesive emulsion of the active ingredients containing latex" in lines 4-5 mean? Is the self-adhesive emulsion referring to the adhesive porous dressing recited in claim 1? What does it mean that the active ingredients contain latex? Is latex another active ingredient that is being recited? This phrase is not understood.

7. What does the term "work" mean in line 5? What is a "lattice work polyurethane"?

8. The phrase "stocking stitch casing of an allergic polyurethane permeable to the air" in lines 6-7 is confusing. What is a stocking stitch? What is an allergic polyurethane? What is a casing of a polyurethane?

(ii) Claim 26 recites the limitation "wherein the adhesive fabric" in 1. There is insufficient antecedent basis for this limitation in the claim. An adhesive fabric is not recited in claim 20, from which claim 6 depends.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-24, 26-27, 31, 33, 35, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crotty et al. (5,985,300) in view of Binutu et al. (Planta Med.) in further view of Kelly et al. (6,146,668).

The instant invention is directed toward a composition containing 0.75-40% of a thickener, 3-85% of a composition containing active ingredients applied on an adhesive porous dressing, wherein the actives are selected from extracts of red clover, hop, common Ladies' mantle, sage, and liquorice, and an extract of *Kigelia Africana* or *Kigelia pinnata*.

Crotty et al. teach the delivery of skin benefit agents via adhesive strips. The product is a strip including a flexible substrate sheet onto which a composition containing an adhesive polymer is deposited. Herbal extracts are taught as skin agents. Licorice, red clover flow, sage, and soybean extracts are taught as particularly suitable. The extracts comprise from 0.00001-40% of the composition. Wetting agents such as propylene glycol, polyethylene glycol and mixtures of these with water is taught. Gel forms of the composition, wherein the compositions are thickened with thickening agents such as carbomer are taught. Acrylic copolymers are taught as suitable for making up the adhesive films. The substrates can be occlusive or non-occlusive and can be made of materials such as cotton and thermoplastic fibers. The substrates may be woven or nonwoven. Fragrances and colorants are taught as additives. The reference fails to teach the percent weight of the thickener and *Kigelia* extracts, and fails to explicitly teach isoflavones in the soybean extract. See abstract; Col. 2, lines 19-35; Col. 3, line 13-Col. 4, line 26; Col. 5, line 29-Col. 6, line 53; Col. 8, lines 10-39.

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Binutu et al. teach extracts of *Kigelia pinnata* as having antibacterial and antifungal activity. See abstract.

Kelly et al. teach soya (soy bean extracts) as comprising large quantities of isoflavones, wherein each extract of soya comprises from 0.05-0.3% isoflavone. See Col. 1, lines 46-64. Thus, the soybean extracts of Crotty comprise isoflavones. Since Crotty teaches the extracts as comprising 0.00001-40% of the composition, and since each soy extract comprises 0.05-0.3% isoflavone, the range of isoflavones recited in instant claim 36 is met.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add *Kigelia pinnata* extract, as taught by Binutu et al., to the composition of Crotty et al. because Crotty et al. teach that antimicrobial agents can be added to their compositions and because of the expectation of achieving a product that is natural, that protects the skin from microbes, and that extends the self-life of the product by providing protection against bacterial invasion.

While the amount of thickener is not explicitly taught, it would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the thickener as comprising 0.75-40% of the composition because it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

The phrase "on a piece of ladies' clothing" in claim 20, lines 3-4, is directed to the intended use of the instant product. Thus, this limitation is not given patentable weight.

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Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crotty et al. in view of Binutu et al. and further in view of Kelly et al. as applied to claims 20-24, 26-27, 31, 33, 35, 36 above, and further in view of Hyldgaard et al. (WO 98/05294).

Crotty et al., Binutu et al., and Kelly et al. are applied as discussed above. The references lack a binding agent.

Hyldgaard et al. teach cosmetic compositions. Hydrolyzed wheat gluten is taught as forming a protective layer on the skin surface. See abstract; page 11, lines 15-23.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add hydrolyzed wheat gluten, as taught by Hyldgaard et al., to the combined composition because of the expectation of achieving a product that protects the skin from external invasion and which increases the amount of active agent that is actually delivered directly to the skin.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crotty et al., Binutu et al., and Kelly et al. as applied to claims 20-24, 26-27, 31, 33, 35, 36 above, and further in view of Bara et al. (5,637,291).

Crotty et al., Binutu et al., and Kelly et al. are applied as discussed above. The reference lacks chitin.

Bara et al. teach cosmetic compositions. Chitin and carbomer are taught as interchangeable gelling agents, wherein gelling agents comprise from 0.1-10% of the composition. See Col. 3, line 59-Col. 4, line 5.



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It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute chitin, as taught by Bara et al., for the carbomer taught by the combined references because of the expectation of achieving equivalent cosmetic thickening effects.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crotty et al., Binutu et al., and Kelly et al. as applied to claims 20-24, 26-27, 31, 33, 35, 36 above, and further in view of Nakamura et al. (5,676,957).

Crotty et al., Binutu et al., and Kelly et al. are applied as discussed above. The reference lacks butylene glycol.

Nakamura et al. teach propylene glycol, butylene glycol, and polyethylene glycol as interchangeable wetting agents. See Col. 4, lines 36-44.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute butylene glycol for the propylene glycol or polyethylene glycol of the combined references because of the expectation of achieving equivalent skin wetting effects.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

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lqw



SREENI PADMANABHAN  
PRIMARY EXAMINER

8/22/03